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                       UNITED STATES DISTRICT COURT
                            DISTRICT OF NEVADA
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                                RENO, NEVADA
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   RICHARD CHUDACOFF, M.D.,
                                            2:08-cv-00863-ECR-RJJ
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        Plaintiff,
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                                            Order
   vs.
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   UNIVERSITY MEDICAL CENTER; et al.,
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        Defendants.
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        Now pending are a number of motions following our Order (#302).
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                    I. Plaintiff's Motion for Sanctions
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        While the case was on appeal, Plaintiff filed a Motion for
  Sanctions Pursuant to Federal Rule of Appellate Procedure 46 & 28
  U.S.C. § 1927. The Ninth Circuit remanded the case to this Court
20 and ordered that we dispose of the Motion for Sanctions.
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        Plaintiff requests sanctions based on an alleged discovery
22 violation. Specifically, Plaintiff claims that Defendants failed to
   disclose liability insurance for UMC which specifically covered:
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        any past, present or future member of any duly constituted
        committee; any individual person engaged by a duly
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        constituted committee for purposes of providing an expert
        opinion with regard fo peer review or credentialing
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        decision concerning an individual physician; any
        individual in charge of any operational department or
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        medical director, staff physician or faculty member of the
        Organization, regardless of whether or not such person is
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directly employed by the Organization or is considered to be an independent contractor.

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(Ex. D. Pl's Mot. Sanctions.) Plaintiff argues that failure to disclose this insurance policy was a violation of Federal Rule of Civil Procedure 26(a), which requires that a party must disclose "any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment." FED. R. CIV. P. 26(a)(1)(A)(iv). Plaintiff further argues that the policy is evidence supporting a link between the physicians and UMC, the very issue that was on appeal.

12 The insurance policy included as an exhibit covers the period 13 between April 16, 2004 and April 16, 2005. This case arises from events that occurred in 2008. The fact that Defendants did not 15 disclose an insurance policy not in effect during the relevant time 16 period should not, in our view, require sanctions. Plaintiff's 17 reply rebuts by providing an insurance policy with similar language 18 effective in 2009. It is unclear why Plaintiff did not attach that policy in addition to the 2004 policy to his initial motion, since 20 Plaintiff states that both policies were produced on the same date. 21 Producing the 2009 policy, which also does not cover 2008, but 22 indicates that a similar policy may have been in effect in 2008, 23 would have given Defendants the opportunity to engage with the 24 merits of Plaintiff's motion, rather than rejecting the argument 25 because the policy produced by Plaintiff was not in effect during the events relevant to this case.

The Court declines to order sanctions at this time, but cautions that the parties should exercise care in the ongoing discovery.

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II. Defendants' Motion for Clarification of the Court's Order (## 306, 312, 323, 324)

Defendants request that (1) the Court provide clarification of 8 its Order (#302), (2) issue an Order striking Plaintiff's Third Amended Complaint filed on October 23, 2011, (3) issue an Order of $10 \parallel \text{Protection prohibiting Plaintiff's counsel from taking the requested}$ 11 depositions, (4) issue an Order striking Plaintiff's improperly 12 disclosed Supplements and requiring Plaintiff to serve Supplements 13 on all parties complaint with the Federal Rules of Civil Procedure, (5) issue an Order striking the report and testimony of Stan Smith, 15 (6) grant sanctions against Plaintiff's counsel for failure to 16 follow the Orders of this Court and the Ninth Circuit Court of 17 Appeals, (7) recalculate discovery to run from the date of filing of $18 \parallel$ a Third Amended Complaint which complies with this Court's orders, 19 and (8) require that counsel attend mandatory, periodic meetings 20 with the magistrate to discuss discovery issues which arise.

A. Plaintiff's Third Amended Complaint

Defendants challenge Plaintiff's third amended complaint (#303) 23 because of the inclusion of Kathleen Silver in the caption; the 24 inclusion of the Medical and Dental Staff, an unincorporated 25 association of private physicians created pursuant to Nev. Rev. Stat. § 450.440 ("Medical and Dental Staff"); the inclusion of

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1 state law claims beyond the one permitted in our Order (#302); and the inclusion of DOE Defendants.

Plaintiff has agreed to remove Kathleen Silver from the caption, to remove the state law claims beyond the claim for violation of the implied covenant of good faith and fair dealing.

Plaintiff claims that the Medical and Dental Staff are 7 defendants for the permitted state law claim, and therefore the 8 Medical and Dental Staff may be included as defendants in this action, and therefore Plaintiff shall be permitted to retain the 10 Medical and Dental Staff as defendants.

Plaintiff included DOE Defendants because he claims the Ninth 12 Circuit stated that "the individual members of the MEC responsible 13 for wrongfully depriving Chudacoff of his protected property 14 interest in UMC staff privileges cannot escape § 1983 liability as 15 private actors." Because of this, Plaintiff wishes to amend to 16 include all members of the MEC who voted in the affirmative to 17 suspend Dr. Chudacoff's privileges. Plaintiff's attempt to include 18 such a broad class of Defendants without further justification shall 19 be denied. Merely voting in the affirmative to suspend Dr. 20 Chudacoff's privileges is not the kind of wrongful deprivation that 21 the Ninth Circuit was referring to.

Plaintiff has recently filed a Motion for Leave to File Fourth 23 Amended Complaint (#338) with a proposed Fourth Amended Complaint 24 that includes all voting members of the MEC. Plaintiff's Motion (#338) shall be denied for the reason that simply voting is not 26 wrongful deprivation of Plaintiff's rights, and therefore 27 Plaintiff's proposed Fourth Amended Complaint is rejected.

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B. Clarification of our Order (#302)

Our Order (#302) reopened discovery for the purposes of 3 determining Plaintiff's damages since discovery closed in May 2009. 4 While we did not disallow Plaintiff's inclusion of new experts on 5 the issue of his damages, we limited discovery on the issue of 6 damages to post-May 2009 damages. We did, however, allow Plaintiff 7 to pursue any discovery previously withheld on the basis of peer 8 review privilege, which we ruled does not apply.

C. Request for Protective Order/Strike Disclosures/Periodic 10 Meetings

Defendants state in their Reply (#317) that their request for a 12 protective order is part of an "ongoing discovery issue which needs 13 to be handled by the Magistrate Judge." The Magistrate Judge has |14| indicated that he will handle the motions relating to discovery that 15 are pending, and therefore we will not rule on this issue at this 16 time.

Similarly, Defendants' request that disclosures be stricken and the expert witness be stricken shall not be ruled on at this time.

Defendants' request for periodic meetings with the Magistrate 20 Judge shall be denied.

D. Request for Sanctions

Defendant's request for sanctions pursuant to Federal Rule of Civil Procedure 37(b)(2) is without merit, and shall be denied.

E. Recalculate Discovery Period

Discovery shall remain open for an additional sixty (60) days 26 following the date of entry of this Order.

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III. Defendants' Motion to Strike Plaintiff's Fourth Amended Complaint Erroneously Filed as Errata to Third Amended Complaint <u>(#310)</u>

Defendant's Motion (#310) states that Plaintiff's Errata to 5 Third Amended Complaint should be treated as a Fourth Amended Complaint filed without permission of the Court. Because the Errata (#308) was filed to correct mistakes contained in the Third Amended Complaint, the Court shall consider the Exhibit attached to the 9 Errata (#308) as an amendment to the Third Amended Complaint 10 contemplated by our previous Order (#302), and the Errata (#308) $11 \parallel \text{shall not be stricken.}$ We have also ruled above that Plaintiff's 12 | Motion for Leave to File Fourth Amended Complaint (#338) is denied 13 because Plaintiff's proposed Fourth Amended Complaint includes 14 improper claims.

However, as noted above, we have denied Plaintiff the 16 opportunity to add by name the DOE Defendants who are additional 17 voting members of the MEC in Plaintiff's proposed Amended Complaint (#338-1). Within fourteen (14) days of the date of entry of this 19 Order, Plaintiff shall file a Fourth Amended Complaint which shall 20 incorporate the changes contemplated by the Errata except for the 21 reference to DOE Defendants who are the additional voting members of the MEC.

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IV. Plaintiff's Motion to Set a Trial Date (#334)

Plaintiff's Motion to Set a Trial Date (#334) shall be denied. 26 The parties are still conducting discovery, filing dispositive 27 motions, and on December 12, 2011, Plaintiff filed a Motion for

1 Leave to File Fourth Amended Complaint (#338). Nor is it correct that there is only one issue remaining. Plaintiff's Third Amended $3 \parallel \text{Complaint} (#308-1) \text{ includes a state law claim which remains}$ undecided.

V. Conclusion

IT IS HEREBY ORDERED that Defendants' Motions (##306, 323, 324) 7 are **GRANTED IN PART AND DENIED IN PART**: Defendants' request that 8 Kathleen Silver and the improper state law claims be removed from 9 Plaintiff's Third Amended Complaint and request for clarification 10 are granted. Discovery shall remain open for an additional sixty $11 \parallel (60)$ days after the date of entry of this Order. Defendants' 12 request for sanctions is denied. The remaining issues not addressed 13 by this Order shall be addressed by the Magistrate Judge and 14 Defendants' additional motions concerning those issues.

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IT IS FURTHER ORDERED that Defendants' Motion to Strike the 17 Errata (#310) is **DENIED**.

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IT IS FURTHER ORDERED that Plaintiff's Motion for Sanctions, 20 originally filed in the Court of Appeals, is **DENIED**.

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IT IS FURTHER ORDERED that Plaintiff's Motion to Set a Trial Date (#334) is **DENIED**.

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IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to File 26 Fourth Amended Complaint (#338) to include voting members of the MEC is **DENIED** because Plaintiff has alleged only that these members

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voted against Plaintiff, which is insufficient. In order to clear
the record concerning DOE Defendants, however, Plaintiff is ordered
to file a fourth amended complaint removing any reference to the DOE
Defendants and otherwise complying with this Order within fourteen
(14) days.

DATED: December 20, 2011.

Edward C, Red UNITED STATES DISTRICT JUDGE